



**Comptroller General  
of the United States**

Washington, D.C. 20548

## **Decision**

**Matter of:** Pathology Associates, Inc.

**File:** B-237208.2

**Date:** February 20, 1990

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James D. Stevens, for the protester.  
Patricia H. Wittie, Esq., Kirkpatrick & Lockhart, for ROW  
Sciences, Inc., an interested party.  
David F. O'Connor, Environmental Protection Agency, for the  
agency.  
James M. Cunningham, Esq., and John F. Mitchell, Esq.,  
Office of the General Counsel, GAO, participated in the  
preparation of the decision.

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### **DIGEST**

Contract awarded for "on-site research animal colony support" to offeror submitting higher proposed cost proposal was reasonable where contracting agency found higher cost proposal to contain excellent merit compared with protester's lower cost, lower scored technical proposal and contracting agency further found that technical merit in higher cost proposal was worth the financial premium involved.

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### **DECISION**

Pathology Associates, Inc. (PAI), protests an award to ROW Sciences, Inc. (ROW), for "on-site research animal [about 7,000 rodents] colony support" at the Health Effects Research Laboratory (HERL), of the Environmental Protection Agency, Cincinnati, Ohio. The request for proposals' (RFP) work statement provided that the successful contractor was to procure animals and supplies, and to provide animal husbandry for laboratory animal species, including disease control, and quality assurance/quality control. The RFP was for a base period of 1-year with two 1-year options of additional services possible.

The RFP's technical evaluation criteria (which were said to be more important than cost) were "understanding the project requirements," (worth a maximum of 150 evaluation points), experience and expertise of the offeror (250 points), experience and expertise of the proposed

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project manager (150 points), quality assurance program plan (50 points), and management approach (400 points). As to each of these standards, proposals were numerically ranked on a 1- to 5-point scale depending on the scores awarded.

Four proposals were received by the closing date of July 10, 1989, from PAI, ROW, and Environmental Health Research & Testing, Inc. (ERT)<sup>1/</sup> and another concern. As a result of the initial technical evaluation of these proposals, EPA determined that ROW, ERT, and PAI had submitted proposals in the competitive range for the award but that the fourth proposal should be excluded from the competitive range. As among the three competitive range proposals, EPA's evaluators scored ROW's proposal to be about 15 percent higher in technical merit than PAI's technical proposal. For example, EPA judged ROW's proposal to be "superior" in "understanding the project" and in "management approach," and "impressive" in the area of "experience and expertise."

EPA conducted negotiations with the three offerors within the competitive range as to both technical and cost issues on September 13, 1989, and these three offerors then submitted best and final offers (BAFOs) by September 15, 1989, which were reviewed by EPA's technical evaluation panel. The panel determined that ROW had "clearly submitted the best proposal from the standpoint of technical criteria." Every area in ROW's proposal was considered by EPA's evaluation panel to be "technically excellent" compared with PAI's technical proposal which was not generally considered excellent but rather "more than adequate" and only "rarely" demonstrating technical excellence.

As to cost considerations, EPA determined that ROW and PAI were "competitive from a dollar standpoint." Further, EPA determined that, although ROW's proposed cost-plus-fixed-fee was about 26 percent higher than that proposed by ERT, ROW's financial proposal was "realistic and reasonable" and worth the higher costs and fee associated with its acceptance. Thereafter, EPA awarded a contract to ROW on September 30, 1989.

PAI principally argues that EPA erroneously downgraded its technical proposal in several areas. In addition, it contends that the agency improperly upgraded ROW's proposal in the areas of offeror experience and project manager.

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<sup>1/</sup> ERT also protested the ROW award. We recently denied that protest. Environmental Health Research & Testing, Inc., B-237208, Feb. 9, 1990, 90-1 CPD ¶ \_\_\_\_.

In reviewing protests of allegedly improper proposal evaluations, our Office will not substitute its judgment for that of the contracting agency's evaluators, who have wide discretion, but rather will examine the record to determine whether the evaluators' judgments were reasonable and in accord with listed criteria and whether there were any violations of procurement statutes and regulations. Norfolk Ship Sys., Inc., B-219404, Sept. 19, 1985, 85-2 CPD ¶ 309.

Furthermore, in a negotiated procurement, there is no requirement that award be made on the basis of lowest cost. Agency officials have broad discretion in determining the manner and extent to which they will make use of the technical and cost evaluation results. Cost/technical tradeoffs may be made, and the extent to which one may be sacrificed for the other is governed only by the test of rationality and consistency with the established evaluation factors. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325. The judgment of the contracting agency concerning the significance of the difference in the technical merit of offers is accorded great weight. Asset Inc., B-207045, Feb. 14, 1983, 83-1 CPD ¶ 150. We have consistently upheld awards to offerors with higher technical scores and higher costs so long as the result is consistent with the evaluation criteria and the contracting agency has determined that the technical difference is sufficiently significant to outweigh the cost difference. Battelle Memorial Inst., B-218538, June 26, 1985, 85-1 CPD ¶ 726.

#### Offeror Experience

EPA's initial technical evaluation found that: (1) PAI had not cited even one contract that involved, "as a cardinal function, providing basic animal care;" (2) although PAI had provided a lengthy description of the experience of the staff members, the firm's described experience did not entitle the proposal to be rated more than acceptable; and (3) the specific experience of one of PAI's employees (a Mr. Stevens) did not "clearly translate" to PAI as an entity since Mr. Stevens was not proposed as Project Manager, but rather was shown as PAI's General Manager and Director of Resource Management rather than being involved in "direct animal colony management."

Given EPA's concerns about PAI's experience, EPA asked PAI during discussions to "expand discussion of contract experience that involves basic animal care." EPA reports that, although PAI's response was useful in that it tended to confirm EPA's understanding of PAI's experience, the response "did not contain superior features;" consequently,

EPA did not further increase PAI's already acceptable score in this area.

In contrast, as to ROW, EPA found: (1) ROW "had performed many similar animal colony management tasks" at another federal facility; and (2) ROW's staff all had a "high level of experience" and the staff's skills tended to complement each other. Given these two evaluations, EPA finally ranked ROW's proposal one numerical evaluation category higher than PAI's proposal.

PAI argues that it should have received a higher score in this area. First, PAI alleges that EPA improperly limited its evaluation to "basic animal care." Further, PAI considers EPA to have "lack[ed] appreciation for the magnitude of the basic animal care functions implicit to [its prior] contracts" and to have improperly enhanced ROW's score in this area. Finally, PAI argues that EPA improperly downgraded the experience contributed by its proposed staff, including that of Mr. Stevens, under this standard.

EPA admits that it gave "greater credit to experience directly involving the management of an animal research colony as opposed to experience derived from pathology and similar contracts." From our reading of the statement of work requiring the successful contractor to basically manage a large colony of research animals, we find EPA's interpretation, and consequent application, of what constituted relevant experience for this contract to be reasonable. Further, we find reasonable EPA's judgment that ROW's proposal described more relevant experience than PAI's proposal since ROW showed that the company, and its staff, had performed, as noted above, "many similar animal colony management tasks." By contrast, PAI and the bulk of staff, as described in PAI's proposal, did not have contract experience involving the provision of basic animal colony care. Moreover, to the extent that PAI's protest evidences mere disagreement with EPA's evaluation of its relevant experience, that mere disagreement is not a basis for sustaining the protest. Lembke Constr. Co. Inc., B-228139, Nov. 23, 1987, 87-2 CPD ¶ 507.

Finally, as to the scoring of the experience Mr. Stevens contributed to PAI, we find reasonable EPA's position that Mr. Stevens's animal colony experience was properly excluded from PAI's experience given that the individual was not proposed as project manager or proposed to be directly involved in animal colony management but, rather, shown to have a number of corporate responsibilities which would not be considered to involve direct animal colony management. To the extent PAI actually intended Mr. Stevens to be

involved in direct animal colony management, PAI should have made that clear in response to EPA's question to "expand discussion" in this area.

### Project Manager

Under this evaluation standard, EPA ultimately assigned PAI's proposed project manager a high numerical ranking (one below a perfect score) for her "clearly impressive . . . current, relevant animal colony management." EPA did note, however, that she had not managed a program of similar size to the proposed contract. EPA ultimately also assigned the same numerical ranking to ROW's proposed project manager.

PAI argues that its proposed project manager should have received a perfect score given her qualifications as described in PAI's proposal. PAI also argues that ROW "submitted a technical proposal in the knowledge that it did not have a committed, qualified Project Manager."

PAI's proposed project manager's resume showed that a number of years ago (1980-1983) she had responsibility as a supervisor, recruiter, and trainer of a staff of animal care technicians and research assistants who were responsible for an "average census of 8,000 research animals" at a medical college. Nevertheless, the resume does not specifically show the 8,000 animals involved in her prior responsibility were rodents (as here) or that there existed an identity of tasks between the medical school facility and the EPA facility. Consequently, we consider this ground of protest essentially to evidence only disagreement with EPA's ranking of the proposed project manager.

As to PAI's allegation about ROW's project manager, we recently concluded, in Environmental Health Research & Testing, Inc., B-237208, supra, that ROW did have an unequivocal offer from that individual to be employed by ROW for the contract in question so that EPA properly evaluated him as ROW's proposed project manager for the work. Consequently, we deny this ground of protest.

### Quality Assurance Program Plan

Under this standard, EPA assigned PAI a score of four because PAI's proposed quality assurance officer was considered not to have sufficient background and because the proposal did not discuss measures to correct deficiencies in quality assurance. Consequently, during negotiations, PAI was asked to expand the discussion on projects the proposed quality assurance officer had managed and to discuss measures to correct deficiencies in quality assurance.

PAI's replies did not change EPA's evaluation as to the proposed quality assurance officer, but EPA noted that PAI's replies did contain a discussion of most necessary points for the correcting of deficiencies in quality assurance. Nevertheless, EPA concluded that PAI's response did not warrant a change in PAI's overall rating for this standard.

PAI first suggests with regard to this aspect of the evaluation that a lack of clarity in the RFP itself and by the EPA in its discussion questions precluded PAI from responding more effectively. Although PAI now says it was puzzled "from the start" by the RFP's description of this standard, there is no indication in the record that PAI requested EPA to clarify the standard or, failing to obtain clarification, submitted a timely protest concerning this deficiency which it now alleges was in the RFP. Further, although PAI insists that it asked EPA to clarify EPA's discussion questions about PAI's quality assurance offer and PAI's measures to correct deficiencies in quality assurance, there is no indication that EPA ever satisfactorily resolved its questions or, in the alternative, that PAI filed a timely protest about EPA's failure to clarify these questions.

Given PAI's failure to obtain satisfactory resolution of its questions in this area by timely protest or other means, any present protest concerning the proper interpretation and application of these quality assurance questions or any protest about EPA's alleged failure to provide appropriate clarification during discussions concerning these provisions we regard as untimely filed and not for consideration. See sections 21.2(a)(1) and 21.2(a)(2) of our Bid Protest Regulations (4 C.F.R. part 21 (1989)).

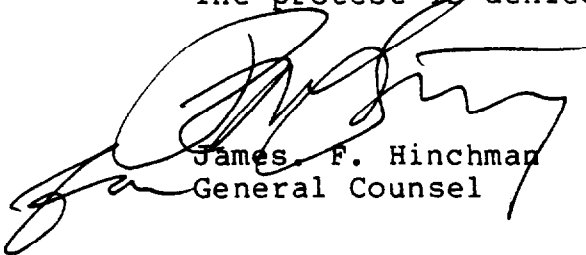
PAI also complains that its quality assurance officer should have received a perfect score since there are allegedly no RFP standards by which to evaluate her credentials. However, we think that implicit in the RFP requirements for quality assurance is the understanding that the individual proposed be competent to ensure the carrying out of those requirements. Based on our review of the record, which shows the qualifications of the proposed quality assurance officer to be limited, we find that EPA reasonably evaluated PAI's proposal in this regard, and we cannot say that EPA acted arbitrarily in not raising PAI's overall ranking in this area.

Finally, PAI notes that EPA admittedly failed to give timely, pre-award notice to PAI of the proposed award so as to enable a protest against the small business status of ROW if PAI had so intended. In reply, EPA notes that ROW is

both a small business and a participant in the Small Business Administration's Section 8(a) program so that EPA's failure to give PAI advance notice of the award was not prejudicial to PAI.

PAI does not suggest that it would have challenged ROW's small business size status even if it had been provided with a timely notice of the proposed award to that firm. The protester does speculate whether EPA improperly gave ROW an evaluation edge because of ROW's 8(a) status. Based upon our review of the record, EPA's award to ROW was based only on its perception that ROW's proposal offered the best value to EPA considering both technical and price factors.

The protest is denied.



James F. Hinchman  
General Counsel